Supreme Court of the United States

OCTOBER TERM, 1902.

No. 229.

EUGENE C. GORDON, FOR THE USE OF MARY G. ROPER, PLAINTIFF IN ERROR,

vs.

ARTHUR E. RANDLE.

Reply Brief for Plaintiff in Error.

IT WAS ERROR NOT TO ISSUE THE RULE TO SHOW CAUSE OR THE MANDAMUS NISI.

It is urged by the brief of the defendant in error that Justice Andrew C. Bradley was not a party to the suit. This is part of the error complained of by the plaintiff in error. The dismissal of the petition for the writ of mandamus by the Court of Appeals, without issuing a rule to show cause or a mandamus *nisi*, was contrary to the practice prescribed by this court.

"When a rule is laid, as in this case, on the judge of a subordinate court, he is ordered to show cause why the peremptory writ of mandamus shall not issue to him, commanding him to do some act which it is alleged he has power to do,

and which it is his duty to do, and which he has improperly neglected and refused to do, as required by law. Due service of the rule being made the judge is required to make return to the charge contained in the rule, which he may do by denying the matters charged or by setting up new matter as an answer to the accusations of the relator, or he may elect to submit a motion to quash the rule or to demur to the accusative allegations. Matters charged in the rule and denied by the respondent must be proved by the relator and matters alleged in avoidance of the charge made, if denied by the relator, must be proved by the respondent. Motions to quash in such cases are addressed to the discretion of the court, but if the respondent demurs to the rule, or if the relator demurs to the return, the party demurring admits everything in the rule or the return, as the case may be, which is well pleaded, and if the relator elects to proceed to hearing on the return, without pleading to the same in any way, the matters alleged in the return must be taken to be true to the same extent as if the relator had demurred to the return."

Ex parte Newman, 14 Wallace, 166.
Life and Fire Ins. Co. of N. Y. *vs.* Adams, 9 Peters, 571.
Angell and Ames on Corporations, § 727.
Fisher *vs.* The City of Charleston, 17 W. Va., 604.
Merrill on Mandamus, § 250.

Writ of error was the proper method of reviewing the action of the Court of Appeals.

Ward *et al. vs.* Gregory, 7 Peters, 633.

It was proper to make the petition for mandamus in the case pending in the Court of Appeals.

The Life and Fire Insurance Co. of N. Y. *vs.* Heirs of Wilson, 8 Peters, 291.

THE DEATH OF JUSTICE BRADLEY DOES NOT ABATE THE PROCEEDINGS IN MANDAMUS.

"That no writ, action, or other proceeding lawfully commenced by or against the head of any department or bureau or other officer of the United States in his official capacity,

or in relation to the discharge of his official duties shall abate by reason of his death or the expiration of his term of office, or his retirement, or resignation, or removal from office, but in such event the court, on motion or supplemental petition filed, at any time within twelve months thereafter, showing a necessity for the revival thereof to obtain a settlement of the questions involved, may allow the same to be maintained by or against his successor in office."

30 U. S. Statutes at Large, 822.

Thompson *vs.* U. S., 103 U. S., 485.

"That a bill of exceptions allowed in any cause shall be deemed sufficiently authenticated if signed by the judge of the court in which the cause was tried, or by the presiding judge thereof if more than one judge sat at the trial of the cause, without any seal of the court or judge annexed thereto. And in case the judge before whom the cause has heretofore been or may hereafter be tried is by reason of death, sickness, or other disability unable to hear and pass upon the motion for a new trial and allow and sign said bill of exceptions, then the judge who succeeds such trial judge, or any other judge of the court in which the cause was tried; holding such court thereafter, if the evidence in such cause has been or is taken in stenographic notes, or if the said judge is satisfied by any other means that he can pass upon such motion and allow a true bill of exceptions, shall pass upon said motion and allow and sign such bill of exceptions; and his ruling upon such motion and allowance and signing of such bill of exceptions shall be as valid as if such ruling and allowance and signing of such bill of exceptions had been made by the judge before whom such cause was tried; but in case said judge is satisfied that owing to the fact that he did not preside at the trial, or for any other cause, that he cannot fairly pass upon said motion, and allow and sign said bill of exceptions, then he may in his discretion grant a new trial to the party moving therefor."

31 U. S. Statutes at Large, 270.

U. S. *vs.* Briething, 20 How., 252.

"It is the established practice now, both in England and in this State, that when a party without laches on his part loses the benefit of his bill of exceptions by the death or illness of a judge, so that he cannot get his exceptions

signed and sealed, he will be entitled to a new trial, notwithstanding the lapse of considerable time."

State, use of Samuel, *vs.* Weiskittle, 61 Md., 51.
Burnett *vs.* Pen. & O. Steamboat Co., 32 E. L. and Eq., 318.
Newton *vs.* Bordle, 54 E. C. L., 795.

"But the district judge is mistaken in supposing that no one but the judge who renders the judgment can grant a new trial. He, as the successor of his predecessor, can exercise the same powers, and has a right to act on every case that remains undecided upon the docket, as fully as his predecessor could have done. The court remains the same, and the change of incumbents cannot and ought not in any respect to injure the rights of litigant parties."

Life and Fire Insurance Co. of N. Y. *vs.* Heirs of Wilson, 8 Peters, 303.
Merrill on Mandamus, § 239.

BEGINNING OF THE TERM ON A HOLIDAY.

The suggestion on the brief of defendant in error that the contention of the plaintiff in error "that where a rule or law prescribes a certain thing be done on the first Tuesday or first Monday of a month it must mean the first juridical Tuesday or Monday" would result in there being no term of court if the rule should prescribe that the term should begin on the last Tuesday of February, and that should be the 22d of February, is misleading. Under such a supposititious state of facts, the last juridical Tuesday of February would be the 15th day of February, or it would be the 29th day of February every fourth year.

The question of the legality of the beginning of a term of court on a holiday will arise once a year for the next four years, unless rule 3 of the supreme court of the District of Columbia is revised to in some way provide what shall be done when the designated day fall on a holiday.

The first Monday in July in 1904 is the Fourth of July.
The first Tuesday in July in 1905 is the Fourth of July.
The first Monday in January in 1906 is New Year's Day.
The first Tuesday in January in 1907 is New Year's Day.

Rule 1 of the Court of Appeals of the District of Columbia provides that when the first day of its January term, the first Monday of January, is New Year's Day, that the term shall begin on the next juridical Monday.

"There shall be three terms a year, the same to commence on the first Monday of October, the first Monday after the first day of January, and the first Monday of April in each year."

Revised Rules of the Court of Appeals, promulgated Sept. 29, 1894.

RULE OF COURT ALLOWING 38 DAYS FOR SETTLEMENT OF BILLS OF EXCEPTIONS WAS COMPLIED WITH.

Dec. 14, 1900.—Judgment.	
Dec. 31, 1900.—17 days, less 3 Sundays.....	14
Jan'y 17, 1901.—Notice, 17 days, less 2 Sundays.....	15
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Jan'y 28, 1902.—Tender, 11 days, less 2 Sundays.....	9
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